

ESTTA Tracking number: **ESTTA777322**

Filing date: **10/18/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224516
Party	Defendant LIT DISTRIBUTOR, INC.
Correspondence Address	CHRISTIAN SANCHELIMA SANCHELIMA & ASSOCIATES P.A. 235 SW LE JEUNE ROAD MIAMI, FL 32258-1108 UNITED STATES paralegal@sanchelima.com, chris@sanchelima.com
Submission	Motion for Summary Judgment
Filer's Name	Christian Sanchelima, Esq.
Filer's e-mail	chris@sanchelima.com, jmenache@sanchelima.com
Signature	/Christian Sanchelima, Esq./
Date	10/18/2016
Attachments	161018jm.Motion for summary judgment.FINAL.350932.pdf(120452 bytes) Exhibit A Mark application.pdf(88812 bytes) Exhibit B Office Action.pdf(107793 bytes) Exhibit C Response to OA.pdf(43348 bytes) Exhibit D Suspension notice.pdf(103525 bytes) 161017jm Signed Declaration by Kestusis Bertasius FINAL.pdf(365587 bytes) Exhibit KB-1 Florida Sunbiz for Lit Distributor.pdf(58221 bytes) KB-2 Mark application for Bertasius.pdf(29079 bytes) 110513jm. Exhibit KB-3 Invoices showing earliest use of NEW.pdf(236385 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROMAR UNIVERSAL, INC.,

Opposition No. 91224516

Petitioner/Opposer,

v.

LIT DISTRIBUTOR, INC.

Application No. 86/622,246

Applicant

_____ /

**APPLICANT'S MOTION FOR SUMMARY JUDGEMENT AND
MEMORANDUM OF LAW IN SUPPORT**

COMES NOW Applicant, **LIT DISTRIBUTOR, INC.** (hereinafter "Applicant"),
by and through its counsel, **Christian Sanchelima, Esq.** hereby files its motion for
summary judgment, in accordance with Rule 56 of the Federal Rules of Civil Procedure.

In support of its motion, **Applicant** submits herewith its Memorandum of Law in
Support of its Motion for Summary Judgment.

Attorney for Applicant:
/s/ Chris Sanchelima
Chris Sanchelima, Esq.
Sanchelima & Associates, P.A.
235 S.W. Le Jeune Rd.,
Miami, FL 33134-1762
Telephone: (305) 447-1617
Facsimile: (305) 445-8484

APPLICANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

I. PRELIMINARY STATEMENT

Applicant moves the Board for a summary judgment in its favor. There are no genuine issues of material facts, as it will be shown in the following paragraphs.

1. Where there are no genuine issues as to any material fact, Applicant is entitled to a judgement in his favor as a matter of law. *QBongrain International (American) Corporation v. Moquet Ltd.*, 230 U.S.P.Q. 626, 627 (T.T.A.B. 1986).

2. There are no genuine issue of material fact in this case and Applicant is entitled to Summary Judgement in his favor as a matter of law.

3. The Board should consider this motion, despite being untimely because the circumstances warrant and judicial economy will be served thereby. TMBP 528.02. Petitioner has not served Applicant with discovery requests and the parties have not begun trial.

II. FACTS

Opposer **ROMAR UNIVERSAL, INC.** is a corporation organized in the state of Florida. Applicant **LIT DISTRIBUTOR, INC., (hereinafter Applicant)** is a corporation organized in the state of Florida. **Declaration of Kestusis Bertasius ¶ 2** Applicant filed its application for the aforementioned mark "NEW" on May, 7, 2015 for Cigarettes under International Class 034. **Declaration of Kestusis Bertasius ¶3** Applicant's first date of use in commerce is May 13, 2011. **Declaration of Kestusis Bertasius ¶ 4** Opposer filed its notice of opposition to Applicant's application on October 22, 2015, citing priority and likelihood of confusion under Trademark Act Section 2(d) as

its basis for opposition (DE-1).

On June 23, 2015, Opposer initially filed its application for the mark NEW under 1(a) for Cigarette tubes; cigarettes, filtered cigars and cigarettes under International Class 034. See Exhibit A. On October 1, 2015, Opposer received an Office Action for its application, which claimed that registration is refused because the Opposer's specimen "does not show the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use." See Exhibit B. The Examining Attorney gave Opposer the option to amend the filing basis to intent to use under Section 1(b).

On April 23, 2016, Opposer filed an Amendment to Delete or Correct basis, where Opposer listed his filing basis as an intent to use application. On June 14, 2016, Opposer's application was published. See Exhibit C. On August 8th, 2016, the Examining Attorney sent Opposer a suspension notice until Applicant's application for the mark "NEW" was either registered or abandoned. See Exhibit D. The examining attorney also noted that Applicant's filing date (May 7, 2015) preceded Opposer's application (June 23, 2015). On June 3, 2016 and July 20, 2016, Applicant served discovery papers on Petitioner. As of today's filing date, Petitioner has not complied with those requests. As of today's filing date, Petitioner has not served pretrial disclosures to Opposer. As of today's filing date, Petitioner has not answered Applicant's attempts, in good faith, to contact Petitioner to discuss a possible motion for summary judgment.

III. LEGAL ISSUE

A. WHETHER PETITIONER OR APPLICANT HAS PRIORITY OVER THE

MARK “NEW”

The Supreme Court set a trend in 1986 liberalizing and encouraging the use of motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 106 S. Ct. 1348 (1986), *Celotex Corp. v. Cattret*, 54 U.S.L.W. 4775 (June 25, 1986). The Supreme Court's holdings reflect the concern of meritless litigation and awareness of the potential of summary judgment to fulfill the just, speedy and inexpensive determination of every action. These holdings have been extended to trademark cases. *Lang v. Retirement Living Publishing Co.*, 21 U.S.P.Q. 1041 (2nd Cir. 1991).

Where there are no genuine issues as to any material fact, Applicant is entitled to a judgment in his favor as a matter of law. *Bongrain International (American) Corporation v. Moquet Ltd.*, 230 U.S.P.Q. 626, 627 (T.T.A.B. 1986). The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. *Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 730 F. 2d 624, 222 U.S.P.Q. 741 (Fed. Cir. 1984). See also TBMP § 528.01 and cases cited therein. Generally, summary judgment is appropriate in cases where the moving party establishes that there are no genuine issues of material fact which require resolution at trial and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is material when its resolution would affect the outcome of the proceeding under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986); and *Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990). A fact is genuinely in dispute if the evidence of record is such that a reasonable fact finder could return a verdict in favor of the

nonmoving party. *Anderson*, 477 U.S. at 248. In deciding a motion for summary judgment, the Board may not resolve an issue of fact; it may only determine whether a genuine issue of material fact exists. See *Meyers v. Brooks Shoe Inc.*, 912 F. 2d 1459, 16 U.S.P.Q. 2d 1055 (Fed. Cir. 1990). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 U.S.P.Q. 2d 1471 (Fed. Cir. 1992); *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 U.S.P.Q. 2d 1542 (Fed. Cir. 1992).

In certain cases, however, even though disputes remain with respect to certain facts, summary judgment may be granted, so long as all factual disputes are resolved in favor of the non-moving party and inferences drawn from the undisputed facts are viewed in the light most favorable to the non-moving party. See *Anderson*, 477 U.S. at 255 (1986) ("The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor"); *Bishop v. Wood*, 426 U.S. 341, (1976); and *Larry Harmon Pictures Corp. v. The William's Restaurant Corp.*, 929 F.2d 662, 18 USPQ2d 1292, 1293 (Fed. Cir. 1991). Clearly, there is no genuine issue of material fact as to Petitioner's priority of use of its mark. *Warner-Lambert Co. v. Sports Solutions, Inc.* 39 U.S.P.Q.2d 1686, 1690 (TTAB 1996); *Monarch Marking Systems, Inc. v. Elan Systems, Inc.*, 39 U.S.P.Q.2d 1035 (TTAB 1996).

Applicant has used the mark "NEW" in commerce since May 13, 2011. Petitioner filed its application as an intent to use application under 1(b). Moreover, Applicant's filing

date (May 7, 2015) preceded Opposer's application (June 23, 2015), which conclusively establishes that Applicant has prior rights over Petitioner's suspended application of the mark "NEW."

B. WHETHER A LIKELIHOOD OF CONFUSION EXISTS BETWEEN THE PETITIONER AND APPLICANT'S MARK "NEW"

To determine whether a likelihood of confusion exists, the Board will typically consider a variety of factors, such as:

- 1) The type of mark, whether the relationship between the name and the service or good is such that the chosen name qualifies as generic, descriptive, suggestive, or arbitrary;
- 2) The similarity of the marks, based in the overall impressions that the marks create;
- 3) The similarity of the goods or services;
- 4) The similarity of the parties' retail outlets, trade channels, and customers;
- 5) The similarity of advertising to determine whether there is likely to be significant overlap in the respective target audiences such that a possibility of confusion could result;
- 6) The defendant's intent, determining whether the defendant had a conscious intent to capitalize on the plaintiff's business reputation, was intentionally blind, or otherwise manifested improper intent; and
- 7) The existence of actual confusion.

Freedom Savings & Loan v. Way, 757 F.2d 1176, 1182, 224 U.S.P.Q. 123 (11th Cir. 1985).

Applicant and Petitioner's marks NEW for Applicant's goods and Petitioner's goods, respectively are extremely similar, if not identical. In addition, the marks are identical in their appearance, phonetics and meaning. Since Applicant has priority over the mark NEW for cigarettes, Applicant respectfully requests the Board to find in its

favor with regards to Petitioner's opposition.

IV. CONCLUSION

The above argument clearly demonstrates that there are no genuine issues of material fact present in this case. Therefore, Applicant is entitled to Summary Judgment in its favor as a matter of law. Applicant prays this Board to enter decision in its favor forthwith.

Respectfully Submitted,

Attorney for Applicant:
/s/ Chris Sanchelima
Chris Sanchelima, Esq.
Sanchelima & Associates, P.A.
Attorney for Applicant
235 S.W. Le Jeune Rd.,
Miami, FL 33134-1762
Telephone: (305) 447-1617
Facsimile: (305) 445-8484

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October 2016, a true and correct copy of the foregoing was served on counsel for Petitioner by electronic mail by the undersigned.

Louis R. Gigliotti, Esq.
Louis R. Gigliotti, PA
1605 Dewey Street
Hollywood, FL 33020
UNITED STATES
lgigliotti@bellsouth.net

Attorney for Applicant:
/s/ Chris Sanchelima
Chris Sanchelima, Esq.
Sanchelima & Associates, P.A.
Attorney for Petitioner
235 S.W. Le Jeune Rd.,
Miami, FL 33134-1762
Telephone: (305) 447-1617
Facsimile: (305) 445-8484

EXHIBIT A

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86671131

Filing Date: 06/23/2015

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	NEW
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	NEW
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Romar Universal, Inc.
INTERNAL ADDRESS	#2300
*STREET	1404 Las Olas Blvd.
*CITY	Ft. Lauderdale
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	33301
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Florida
GOODS AND/OR SERVICES AND BASIS INFORMATION	
* INTERNATIONAL CLASS	034
*IDENTIFICATION	Cigarette tubes; Cigarettes; Filtered cigars and cigarettes
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/23/2003

FIRST USE IN COMMERCE DATE	At least as early as 07/23/2003
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT 16\866\711\86671131\xml1\FTK0003.JPG
SPECIMEN DESCRIPTION	cigarette packaging
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Louis R. Gigliotti
FIRM NAME	Louis R. Gigliotti PA
STREET	1605 Dewey Street
CITY	Hollywood
STATE	Florida
COUNTRY	United States
ZIP/POSTAL CODE	33020
PHONE	9544714392
FAX	9549228214
EMAIL ADDRESS	lgigliotti@bellsouth.net
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	Louis R. Gigliotti
FIRM NAME	Louis R. Gigliotti PA
*STREET	1605 Dewey Street
*CITY	Hollywood
*STATE (Required for U.S. applicants)	Florida
*COUNTRY	United States
*ZIP/POSTAL CODE	33020
PHONE	9544714392
FAX	9549228214
*EMAIL ADDRESS	lgigliotti@bellsouth.net
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	

APPLICATION FILING OPTION	TEAS Plus
NUMBER OF CLASSES	1
FEE PER CLASS	225
* TOTAL FEE PAID	225
SIGNATURE INFORMATION	
* SIGNATURE	/Louis R. Gigliotti/
* SIGNATORY'S NAME	Louis R. Gigliotti
* SIGNATORY'S POSITION	Attorney
SIGNATORY'S PHONE NUMBER	9544714392
* DATE SIGNED	06/23/2015

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 86671131

Filing Date: 06/23/2015

To the Commissioner for Trademarks:

MARK: NEW (Standard Characters, see [mark](#))

The literal element of the mark consists of NEW.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Romar Universal, Inc., a corporation of Florida, having an address of

#2300,
1404 Las Olas Blvd.
Ft. Lauderdale, Florida 33301
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 034: Cigarette tubes; Cigarettes; Filtered cigars and cigarettes

In International Class 034, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 07/23/2003, and first used in commerce at least as early as 07/23/2003, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) cigarette packaging.

[Specimen File1](#)

The applicant's current Attorney Information:

Louis R. Gigliotti of Louis R. Gigliotti PA
1605 Dewey Street
Hollywood, Florida 33020
United States

The applicant's current Correspondence Information:

Louis R. Gigliotti
Louis R. Gigliotti PA
1605 Dewey Street
Hollywood, Florida 33020
9544714392(phone)
9549228214(fax)
lgigliotti@bellsouth.net (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. Section 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce on or in connection with the goods/services in the application, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature: /Louis R. Gigliotti/ Date Signed: 06/23/2015

Signatory's Name: Louis R. Gigliotti

Signatory's Position: Attorney

RAM Sale Number: 86671131

RAM Accounting Date: 06/23/2015

Serial Number: 86671131

Internet Transmission Date: Tue Jun 23 12:23:45 EDT 2015

TEAS Stamp: USPTO/FTK-XXX.XXX.XXX.XXX-20150623122345

505823-86671131-530f589fbec8a5677bf7f545

bac2436ea73cd563bbea602a861072a032674b71

c-CC-10241-20150623121651760668

NEW

SURGEON GENERAL WARNING:
Cigarette Smoking Can Cause Cancer Of The
Mouth And Throat, Even If You Do Not Inhale.

NEW

ORIGINAL

20 CLASS A CIGARETTES

MANUFACTURED UNDER
AUTHORITY
OF TRADEMARK OWNER
MADE IN USA
WETBACC.CO.COM

PT-50-15000



NEW

ORIGINAL

20 CLASS A CIGARETTES

ORIGINAL

NEW



NEW

ORIGINAL

20 CLASS A
CIGARETTES

UNDERAGE SALE
PROHIBITED



EXHIBIT B

To: Romar Universal, Inc. (lgigliotti@bellsouth.net)
Subject: U.S. TRADEMARK APPLICATION NO. 86671131 - NEW - N/A
Sent: 10/1/2015 10:05:02 AM
Sent As: ECOM101@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86671131

MARK: NEW

86671131

CORRESPONDENT ADDRESS:

LOUIS R. GIGLIOTTI
Louis R Gigliotti Pa
1605 Dewey St
Hollywood, FL 33020-6116

CLICK HERE TO RESPOND TO THIS LETTER:
http://www.uspto.gov/trademarks/teas/response_forms.jsp

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Romar Universal, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

lgigliotti@bellsouth.net

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 10/1/2015

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

NO CONFLICTING MARK NOTED

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

SPECIMEN REQUIRED

Registration is refused because the specimen is a printer's proof and thus does not show the applied-for mark in use in commerce for each international class. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a), 1301.04(a), (g)(i). Generally, printer's proofs are preliminary copies of documents used to make corrections before publication. Proofs are usually not disseminated to the public, and thus do not show use in commerce of the mark in connection with the identified goods and/or services. *See* 15 U.S.C. §1127; *In re The Signal Cos.*, 228 USPQ 956, 957-58 n.4 (TTAB 1986); TMEP §§904.04(a), 904.07(a), 1301.04(a).

An application based on Trademark Act Section 1(a) must include a specimen showing the applied-for mark in use in commerce for each international class of goods and/or services identified in the application or amendment to allege use. 15 U.S.C. §1051(a)(1); 37 C.F.R. §§2.34(a)(1)(iv), 2.56(a); TMEP §§904, 904.07(a).

Examples of specimens for goods include tags, labels, instruction manuals, containers, photographs that show the mark on the actual goods or packaging, and displays associated with the actual goods at their point of sale. *See* TMEP §§904.03 *et seq.* Webpages may also be specimens for goods when they include a picture or textual description of the goods associated with the mark and the means to order the goods. TMEP

§904.03(i). Examples of specimens for services include advertising and marketing materials, brochures, photographs of business signage and billboards, and webpages that show the mark used in the actual sale, rendering, or advertising of the services. *See* TMEP §1301.04(a), (h)(iv)(C).

Applicant may respond to this refusal by satisfying one of the following for each applicable international class:

- (1) Submit a different specimen (a verified “[substitute](#)” [specimen](#)) that (a) was in actual use in commerce at least as early as the filing date of the application or prior to the filing of an amendment to allege use and (b) shows the mark in actual use in commerce for the goods and/or services identified in the application or amendment to allege use.
- (2) Amend the filing basis to [intent to use under Section 1\(b\)](#), for which no specimen is required. This option will later necessitate additional fee(s) and filing requirements such as providing a specimen.

For an overview of *both* response options referenced above and instructions on how to satisfy either option online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/specimen.jsp>.

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS – TO MAINTAIN LOWER FEE, ADDITIONAL REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$50 per international class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner’s amendment by telephone without incurring this additional fee.

/Aisha Clarke/
Examining Attorney
Law Office 101
571-272-9295
571-273-9295 fax
aisha.clarke@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Oct 1, 2015

86622246

Issue: 0000/00/00

DESIGN MARK

Serial Number

86622246

Status

PUBLISHED FOR OPPOSITION

Word Mark

NEW

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

LIT DISTRIBUTOR, INC. CORPORATION FLORIDA 11652 COLLINS CREEK DR.
JACKSONVILLE FLORIDA 32258

Goods/Services

Class Status -- ACTIVE. IC 034. US 002 008 009 017. G & S:
Cigarettes. First Use: 2003/07/10. First Use In Commerce:
2003/07/23.

Filing Date

2015/05/07

Examining Attorney

VAGHANI, MAYUR

NEW

To: Romar Universal, Inc. (lgigliotti@bellsouth.net)
Subject: U.S. TRADEMARK APPLICATION NO. 86671131 - NEW - N/A
Sent: 10/1/2015 10:05:03 AM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

**IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION**

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **10/1/2015** FOR U.S. APPLICATION SERIAL NO. 86671131

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **10/1/2015** (*or sooner if specified in the Office action*). For information regarding response time periods, see <http://www.uspto.gov/trademarks/process/status/responsetime.jsp>.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the ABANDONMENT of your application. For more information regarding abandonment, see <http://www.uspto.gov/trademarks/basics/abandon.jsp>.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

Exhibit C

Trademark Snap Shot Amendment to Delete or Correct Basis
(Table presents the data on Amendment to Delete or Correct Basis)

OVERVIEW

SERIAL NUMBER	86671131	FILING DATE	06/23/2015
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	CLARKE, IDI A	L.O. ASSIGNED	101

PUB INFORMATION

RUN DATE	04/23/2016		
PUB DATE	N/A		
STATUS	661-RESPONSE AFTER NON-FINAL-ACTION-ENTERED		
STATUS DATE	04/22/2016		
LITERAL MARK ELEMENT	NEW		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	NO	1 (a)	NO
1 (b)	NO	1 (b)	YES	1 (b)	YES
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	NEW
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	Romar Universal, Inc.
ADDRESS	#2300 1404 Las Olas Blvd. Ft. Lauderdale, FL 33301
ENTITY	03-CORPORATION

CITIZENSHIP	Florida
GOODS AND SERVICES	
INTERNATIONAL CLASS	034
DESCRIPTION TEXT	Cigarette tubes; Cigarettes; Filtered cigars and cigarettes

GOODS AND SERVICES CLASSIFICATION							
INTERNATIONAL CLASS	034	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS	
CHANGE IN REGISTRATION	NO

PROSECUTION HISTORY				
DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
04/22/2016	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
04/22/2016	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
04/18/2016	ALIE	A	ASSIGNED TO LIE	008
04/01/2016	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
10/01/2015	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
10/01/2015	GNRT	F	NON-FINAL ACTION E-MAILED	005
10/01/2015	CNRT	R	NON-FINAL ACTION WRITTEN	004
09/29/2015	DOCK	D	ASSIGNED TO EXAMINER	003
06/29/2015	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
06/26/2015	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION	
ATTORNEY	Louis R. Gigliotti
CORRESPONDENCE ADDRESS	LOUIS R. GIGLIOTTI Louis R Gigliotti Pa 1605 Dewey St Hollywood, FL 33020-6116
DOMESTIC REPRESENTATIVE	NONE

NEW

Exhibit D

To: Romar Universal, Inc. (lgigliotti@bellsouth.net)
Subject: U.S. TRADEMARK APPLICATION NO. 86671131 - NEW - N/A
Sent: 8/8/2016 3:04:42 PM
Sent As: ECOM101@USPTO.GOV
Attachments: [Attachment - 1](#)
[Attachment - 2](#)

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86671131

MARK: NEW

86671131

CORRESPONDENT ADDRESS:

LOUIS R. GIGLIOTTI

Louis R Gigliotti Pa

1605 Dewey St

Hollywood, FL 33020-6116

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/trademarks/index.jsp>

[VIEW YOUR APPLICATION FILE](#)

APPLICANT: Romar Universal, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO :

N/A

CORRESPONDENT E-MAIL ADDRESS:

lgigliotti@bellsouth.net

SUSPENSION NOTICE: NO RESPONSE NEEDED

ISSUE/MAILING DATE: 8/8/2016

The trademark examining attorney is suspending action on the application for the reason(s) stated below. *See* 37 C.F.R. §2.67; TMEP §§716 *et seq.*

Action on this application is suspended until the earlier-filed referenced application is either registered or abandoned. 37 C.F.R. §2.83(c). A copy of information relevant to this referenced application(s) is attached.

- Application Serial No(s). 86622246

The applicant's mark is "NEW" for "Cigarette tubes; Cigarettes; Filtered cigars and cigarettes." The prior pending applicant's mark is also "NEW" for "cigarettes." The marks are confusingly similar because they are identical and identify the same goods.

The effective filing date of the pending application (May 7, 2015) precedes the filing date of applicant's application (June 23, 2015). If the mark

in the referenced application registers, applicant's mark may be refused registration under Section 2(d) because of a likelihood of confusion with that registered mark. *See* 15 U.S.C. §1052(d); 37 C.F.R. §2.83; TMEP §§1208 *et seq.*

The USPTO will periodically conduct a status check of the application to determine whether suspension remains appropriate, and the trademark examining attorney will issue as needed an inquiry letter to applicant regarding the status of the matter on which suspension is based. TMEP §§716.04, 716.05. Applicant will be notified when suspension is no longer appropriate. *See* TMEP §716.04.

No response to this notice is necessary; however, if applicant wants to respond, applicant should use the "Response to Suspension Inquiry or Letter of Suspension" form online at <http://teasroa.uspto.gov/rsi/rsi>.

/Aisha Clarke/
Examining Attorney
Law Office 101
571-272-9295
571-273-9295 fax
aisha.clarke@uspto.gov

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the Trademark Electronic Application System (TEAS) form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

Print: Jul 18, 2016

86622246

DESIGN MARK

Serial Number

86622246

Status

OPPOSITION PENDING

Word Mark

NEW

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

LIT DISTRIBUTOR, INC. CORPORATION FLORIDA 11652 COLLINS CREEK DR.
JACKSONVILLE FLORIDA 32258

Goods/Services

Class Status -- ACTIVE. IC 034. US 002 008 009 017. G & S:
Cigarettes. First Use: 2003/07/10. First Use In Commerce:
2003/07/23.

Filing Date

2015/05/07

Examining Attorney

VAGHANI, MAYUR

Attorney of Record

Christian Sanchelima, Esq.

NEW

To: Romar Universal, Inc. (lgigliotti@bellsouth.net)
Subject: U.S. TRADEMARK APPLICATION NO. 86671131 - NEW - N/A
Sent: 8/8/2016 3:04:44 PM
Sent As: ECOM101@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

IMPORTANT NOTICE REGARDING YOUR
U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **8/8/2016** FOR U.S. APPLICATION SERIAL NO.86671131

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this [link](#) or go to <http://tsdr.uspto.gov/>, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

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**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ROMAR UNIVERSAL, INC.,

Opposition No. 91224516

Petitioner,

v.

LIT DISTRIBUTOR, INC.

Application No. 86/622,246

Applicant.
_____ /

Declaration of Kertusis Bertasius

The undersigned declares under penalty of perjury under the laws of the United States of America, that the following matters to which he has personal knowledge are true:

1. I am over the age of 18, and I have personal knowledge of the facts alleged herein.
2. I am the president and registered agent for Lit Distributor, Inc., a tobacco wholesaler, distributor and exporter, located in 11652 Collins Creek Drive, Jacksonville, Florida 32258. **Exhibit KB-1**
3. On May 7, 2015, I filed the application for the mark "NEW" as Serial #86622246 under class 034 for cigarettes. **Exhibit KB-2.**
4. The date of first use in commerce for the mark NEW is May 13, 2011.¹ **Exhibit KB-3**
5. I never signed any licensing agreement with the Petitioner ROMAR UNIVERSAL, INC. to use the mark NEW. I am the rightful owner of the mark NEW.

¹ On February 8, 2015, my attorney filed a motion for leave to amend the mark application for NEW.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Date: 10 - 17 - 2016



Kestus Bertasius

KB- 1

DOCUMENT# P08000040974

Entity Name: LIT DISTRIBUTOR, INC.

Current Principal Place of Business:

11652 COLLINS CREEK DR.
JACKSONVILLE, FL 32258

Current Mailing Address:

11652 COLLINS CREEK DR.
JACKSONVILLE, FL 32258

FEI Number: 37-1567398

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

BERTASIUS, KESTUTIS
11652 COLLINS CREEK DR.
JACKSONVILLE, FL 32258 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: KESTUTIS BERTASIUS

05/01/2016

Electronic Signature of Registered Agent

Date

Officer/Director Detail :

Title P, D
Name BERTASIUS, KESTUTIS
Address 11652 COLLINS CREEK DR.
City-State-Zip: JACKSONVILLE FL 32258

Title S, D
Name BERTASIUS, KESTUTIS
Address 11652 COLLINS CREEK DR.
City-State-Zip: JACKSONVILLE FL 32258

I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.

SIGNATURE: KESTUTIS BERTASIUS

PRESIDENT

05/01/2016

Electronic Signature of Signing Officer/Director Detail

Date

KB- 2

Voluntary Amendment

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86622246
LAW OFFICE ASSIGNED	LAW OFFICE 102
MARK SECTION	
MARK	http://tmng-al.uspto.gov/resting2/api/img/86622246/large
LITERAL ELEMENT	NEW
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	034
DESCRIPTION	Cigarettes
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/10/2003
FIRST USE IN COMMERCE DATE	At least as early as 07/23/2003
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	034
DESCRIPTION	Cigarettes
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 05/13/2011
FIRST USE IN COMMERCE DATE	At least as early as 05/13/2011
SIGNATURE SECTION	
DECLARATION SIGNATURE	/Kestutis Bertasius/
SIGNATORY'S NAME	Kestutis Bertasius
SIGNATORY'S POSITION	President
SIGNATORY'S PHONE NUMBER	3054471617
DATE SIGNED	01/29/2016
RESPONSE SIGNATURE	/Chris Sanchelima/
SIGNATORY'S NAME	Chris Sanchelima
SIGNATORY'S POSITION	Attorney of Record
SIGNATORY'S PHONE NUMBER	3054471617

DATE SIGNED	01/29/2016
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Jan 29 22:06:32 EST 2016
TEAS STAMP	USPTO/PRA-XX.XX.XXX.XX-20 160129220632458772-866222 46-55068f8b9afee3be8b4272 dfa33601b375884c788dfd4b1 dbe0623bdd3d9cb3ef3-N/A-N /A-20160129215044706203

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1966 (Rev 10/2011)
OMB No. 0651-0050 (Exp 07/31/2017)

Voluntary Amendment

To the Commissioner for Trademarks:

Application serial no. **86622246** NEW(Standard Characters, see <http://tmng-al.uspto.gov/resting2/api/img/86622246/large>) has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 034 for Cigarettes

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 07/10/2003 and first used in commerce at least as early as 07/23/2003 , and is now in use in such commerce.

Proposed: Class 034 for Cigarettes

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 05/13/2011 and first used in commerce at least as early as 05/13/2011 , and is now in use in such commerce.

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or allegation of use (AOU) unsigned, all statements in the application or AOU and this submission based on the signatory's own knowledge are true, and all statements in the application or AOU and this submission made on information and belief are believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AOU: If the applicant filed an unsigned application under 15 U.S.C. §1051(a) or AOU under 15 U.S.C. §1051(c), the signatory additionally believes that: the applicant is the owner of the mark sought to be registered; the mark is in use in commerce and was in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AOU on or in connection with the goods/services/collective membership organization in the application or AOU; **for a collective trademark, collective service mark, collective membership mark application, or certification mark application**, the applicant is exercising legitimate control over the use of the mark in commerce and was exercising legitimate control over the use of the mark in commerce as of the filing date of the application or AOU; **for a certification mark application**, the applicant is not engaged in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective**

membership organization of such other persons, to cause confusion or mistake, or to deceive.

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION AND FOR SECTION 66(a)

COLLECTIVE/CERTIFICATION MARK APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. §§ 1051(b), 1126(d), and/or 1126(e), or filed a collective/certification mark application under 15 U.S.C. §1141f(a), the signatory additionally believes that: *for a trademark or service mark application*, the applicant is entitled to use the mark in commerce on or in connection with the goods/services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date; *for a collective trademark, collective service mark, collective membership mark, or certification mark application*, the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date; the signatory is properly authorized to execute the declaration on behalf of the applicant; *for a certification mark application*, the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant. **To the best of the signatory's knowledge and belief, no other persons, except, if applicable, authorized users, members, and/or concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services/collective membership organization of such other persons, to cause confusion or mistake, or to deceive.**

Signature: /Kestutis Bertasius/ Date: 01/29/2016

Signatory's Name: Kestutis Bertasius

Signatory's Position: President

Signatory's Phone Number: 3054471617

Voluntary Amendment Signature

Signature: /Chris Sanchelima/ Date: 01/29/2016

Signatory's Name: Chris Sanchelima

Signatory's Position: Attorney of Record

Signatory's Phone Number: 3054471617

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the owner/holder in this matter: (1) the owner/holder has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the owner/holder has filed a power of attorney appointing him/her in this matter; or (4) the owner's/holder's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 86622246

Internet Transmission Date: Fri Jan 29 22:06:32 EST 2016

TEAS Stamp: USPTO/PRA-XX.XX.XXX.XX-20160129220632458

772-86622246-55068f8b9afee3be8b4272dfa33

601b375884c788dfd4b1dbe0623bdd3d9cb3ef3-

N/A-N/A-20160129215044706203

KB-3

LIT Distributor, Inc.

11652 Collins Creek Dr.
Jacksonville, FL 32258

Purchase Order

Date	P.O. No.
5/13/2011	5

Vendor	Ship To
Optima Tobacco Corp. 52 N.Prospect Dr. Coral Gables, FL 33133	LIT Distributor, Inc. 11652 Collins Creek Dr. Jacksonville, FL 32258

Item	Description	Qty	Rate	Amount
NEW-R100B	NEW Red 100 BOX	3,720	2.08	7,737.60
NEW-B100B	NEW Blue 100 BOX	3,000	2.08	6,240.00
NEW-G100B	NEW Green 100 BOX	3,000	2.08	6,240.00
NEW-BG100B	NEW Bright Green 100 BOX	2,400	2.08	4,992.00
NEW-RKB	NEW Red King BOX	3,000	2.08	6,240.00
NEW-BKB	NEW Blue King BOX	1,800	2.08	3,744.00
NEW-GKB	NEW Green King BOX	1,800	2.08	3,744.00
			Total	\$38,937.60

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